HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 477 (MS) of 2001
Baldev Singh Gusain

Vs

District Judge, Nainital
& others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 4.8.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 477 (MS) OF 2001

Baldev Singh Gusain,
S/o Sri (late) Bhau Singh,
R/o Village Tiloth, Patti Baragaddi,
District-Uttarkashi. .....Petitioner.

Versus

1. District Judge, Nainital.
2. State of U.P., through Collector, Uttarkashi.
3. The Executive Engineer, Maneri Bhali Construction Division, Joshyiara, Uttarkashi.

.....Respondents.

Dated: 04.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Jain, Advocate for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 18.09.1995 and 29.01.1993 passed by the District Judge, Uttarkashi and Prescribed Authority, Bhatwari, Uttarkashi.

3. Briefly stated, according to the petitioner, he is the owner of landed property, where he has constructed a house comprising six rooms in Village Tiloth Patti Naragaddi District Uttarkashi comprising Khasra No. 296, 297, 1258, 1481, 1482, 1638, 1649, 1650, 1691, 1693, 1772, 1702, 1703, 1703 and 1710.

4. The petitioner has submitted that the aforesaid land was acquired by the Maneri Bhali Construction Division, Joshiyara, District Uttar Kashi by private negotiation in 1975 and after receiving the sale consideration of Rs. 22031.25 for the said land, the sale deed was executed and registered on 22.03.1975.

5. For the purpose of the Manari Bhali Project, the authorities have acquired only 13 Nali 2 Muthi land of the Khata No. 61 belonging to the petitioner, but according to the petitioner, a sale deed of area 14 Nali 11 Muthi was wrongly executed. The then Executive Engineer of the Maneri Bhali Project by the letter dated November 14, 1986 affirmed this fact that the authorities have acquired only 13 Nalit Two Muthi land.

6. According to the petitioner, the Tehsildar, Tehsil Baragaddi mutated only 13 Nali, 12 Mutthi land in the name of Maneri Bhali Project, through the sale deed was executed for 14 Nali 11 Muthi, whereas 13 Nali 2 Muthi land was mutated by the Tehsildar in the name of Maneri Bhali Project, but due to some mistake, instated of mutating 13 Nali 2 Muthi land, the land 13 Nali 12 Muthi was mutated in the name of the said project.

7. The grievance of the petitioner is that the State of U.P. or the Maneri Bhali Project had no legal right to initiate eviction proceeding against the petitioner in respect of the land of Plot No. 1481 and 1482, which was covered by the residential house of the petitioner.

8. Petitioner has submitted that before execution of the sale deed 22.03.1975, it was orally agreed upon between the petitioner and the Executive Engineer of the Maneri Bhali Project that proper demarcation and valuation of the house existing on the land in dispute will be made in present of the petitioner and then a separate and registered sale deed shall be executed after payment of compensation of the said house to the petitioner. After some time in the year, 1976, the petitioner was informed by the Maneri Bhali Project authorities that the valuation of his house has been made to the extent of Rs. 5,722/-, which he may collect from the project authorities and after collection of the said amount, he may execute a sale deed in this connection.

9. According to the respondents after execution of the sale deed of the land of the petitioner, the physical possession of the land was obtained by the project authorities form the petitioner in the year, 1975 itself and in the year, 1984, the petitioner fraudulently obtained the possession of plot No. 1481 and 1482 over which the house of the petitioner is presently situated.

10. Thereafter, on 08.07.1992, the Prescribed Authority issued a notice against the petitioner under Section 4(1) of the U.P. Public Premises (Eviction of the Unauthorised Occupant) Act, 1972 calling upon him to show cause as to why an order of the eviction may not be passed against him in respect of his landed property i.e. plot no. 1481 and 1482 measuring 0.039 hectare.

11. Thereafter, the proceedings being Case No. 46 of 1991-92 was initiated by the State, which was allowed by the

Prescribed Authority on 19.01.1993 directing the eviction of the petitioner from plots no. 1481 and 1482.

12. Aggrieved by the aforesaid order, the petitioner preferred an appeal being Appeal No. 29 of 1993 *Baldev Singh Vs. State of U.P.* The same was dismissed with costs. The appellate Court has observed as under:

> *"It was contended that only the land was transferred and the house was not transferred and possession was not delivered. However, from the sale deed it is clear that there was no construction on plots no. 1481 and 1482 or any plot which was transferred to the Executive Engineer. Although there was reference that it was Bhumidhari land and agricultural plot but there was no reference that there was any construction on the said plot. Further even if there was any construction it was also transferred along with the land because in the sale deed it was clearly mentioned that the opposite party had transferred plot and had delivered possession and thereafter, he had no concern with the said plots, and therefore, it is clear that even if there was some construction it was also transferred along with the land."*

13. A perusal of the order dated 14th November, 1986 (Annexure No. 4 to the writ petition) shows that the acquisition was to the extent of 13 Nali 2 Muthi. The same is quoted below:

> ''आपके प्रार्थना पत्र दिनांक 18–10–86 के सन्दर्भ में सूचित किया जाता है कि इस कार्यालय में प्राप्त अभिलेखानुसार श्री सुन्दर सिंह, श्री प्रेम सिंह, श्री

बलदेवसिंह पुत्र श्री नौ सिंह पत्नि रजमा ग्राम तिलाव की मनेरी वाली जल विद्युत परियोजना प्रथम चरण हेतु पंचालय खाते की भूमि 13 नाली 12 मुट्ठी तिरह नाली दो मुट्ठीक्र अध्याप्त की गयी है। इस आप्रय का प्रमाण पत्र पहले भी श्री सुभाष चन्द्र गुसाई पुत्र श्री सुन्दर सिंह गुसाई को पहले भी दिया गया।''

14. A perusal of the statement of Executive Engineer dated 03.11.1992 (Annexure No. 7 to the writ petition) shows that he is already in possession of the land. The statement is quoted below:

''मैं जनपद में 26–10–89 से तैनात हूॅ विवादित जमीन है उस पर जो मकान है जमीन पर काबिज होने के कारण हम उस मकान पर भी काबिज है क्योंकि विवादित जमीन की रजिस्टी हमने करा रखा है। विवादित जमीन क्रय की गयी थी उस समय ही उस पर बने मकान की कीमत आंकी गयी था किन्तु उसका भुगतान अभी तक विपक्षी ने नहीं लिया है। मकान की कीमत कुल रू0 5722=00 है। मैंने उस समय बैनामा रजिस्टी द्वारा विवादित भूमि विपक्षी की सहमति से क्रय की थी औार विपक्षी ने उस समय विवादित भूमि पर जो भी भवन निर्मित था उसके सहित ही क्रय की गई भूमि का कब्जा दिया था। मैंने से मेरा अभिप्राय तत्कालीत सम्बन्धित अधिकारी से है जो सम्बन्धित विभाग के थे, यह कहना गलत है कि मौके पर हमारा कब्जा न हो। रजिस्टी जिन लोगों द्वारा की गई थी वे बहिनामा रजिस्टी जो पत्रावली में सम्मिलित है पर अंकित है।''

15. Similar statement was made by the Patwari on 22.09.1992 (Annexure No. 8 to the writ petition). The same is quoted below:

''यह कहना सही है कि अवैध कब्जा मकान बनाकर कर रखा है। यह कहना सही है कि मेरे चालान करने से पूर्व ही मकान बना हुआ था। जिसमें पलस्तर का कार्य बाकी था। विवादित खसरा नम्बर पर बन्दोबस्ती अभिलेख में नक्से में आबादी और साफ खसरे में छानचौक दर्ज है। प्रश्नगत खसरा नं0 पर विपक्षी ने मकान बनाकर कब्जा सन् 1984–85 में हुआ यह बात मेरे व्यक्तिगत ज्ञान में नहीं हैं, बल्कि अधिप्रासी अभियन्ता के कहने के अनुसार बता रहा हूँ।''

16. The letter dated 30th June, 1976 shows that the house was never transferred. The same is quoted below:

''प्रेषक,

सहायक अभियन्ता प्रथम।

मनूरी भाली निर्माण खन्ड

जोसियारा उित्तरकाप्रीक्र

सेवा में,

श्री बलदेव सिंह,

ग्रामः तिलोण, पट्टी बाड़ागढ़ी,

पी0 ओ0:– जोसियारा।

जिलाः– उत्तरकाप्री।

पत्रसंख्याः–458 / प्रथम / म0मा0न0ख / एल–1,

दिनांक 30 जून 1976

विषयः– मकान के मुआवजे के सम्बन्ध में।

महोदय,

आपको इस कार्यालय के पत्रांक 53 / म0मा0नि0ख0 / प्रथम / एल–1, दिनांक 6–2–76 एवं 211 / प्रथम / म0मा0नि0ख0 / एल., दिनांक 28–4–76 द्वारा लिखा, गया था कि आप अपने मकान का मुआवजा आकर इस कार्यालय में ले लें। झापके हिस्सेदार श्री प्रेम सिंह ने इस कार्यालय में लिखित रूप से सूचित किया है कि वह अपना मुआवजा लेने को तैयार है। अतः आप व आपका हिस्सेदार श्री प्रेम सिंह इस कार्यालय से मुआवजा प्राप्त कर लें तथा रजिस्टी आदि करा लें। जमीन की रजिस्टे पहले से ही हो चुकी है तथा अब मकान के विषय में विलम्ब करना

उचित नहीं है जमीन के विषय में आपके वाद का निर्णय न्यायालय से होना है। अतः इस विषय में मकान के मुआवजे का कोई सम्बन्ध नहीं है।

वीरेन्द्र पाल गुप्ताक्र

सहायक अभियन्ता प्रथम''

17. Petitioner has referred Section 2(b) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act and has submitted that the Act is not applicable in the present case as no proceeding under Public Premises can be initiated. Section 2(b) of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act is quoted below:

> *"2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes,-*
>
> *(i) the garden grounds and out houses, if any, appertaining to such building or part of a building; and*
>
> *(ii) any fittings or fixtures affixed to or any furniture supplied with such building or art of a building for the more beneficial enjoyment thereof.*
>
> *but does not include land which for the time bering is held by a tenure holder under any law relating to land tenures."*

18. In ***Ranjeet Singh Vs. State of U.P. & others [2002(1) ELC 508 (HC),*** this Court has passed the following order to the following effect:-

> *"4. Learned counsel for the petitioners contended that the proceedings relating to*

agricultural land could not have been initiated under the Uttar Pradesh (Eviction of Unauthorised Occupants) Act. If the petitioners were unauthorized occupants on any agricultural land belonging to State, the proceedings under Section 122-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 could be drawn against them, as the land held by a tenure holder for the time being is not a public premises.

5. I find force in the contention of the learned counsel for the petitioners. The definition of "land" as defined under Section 3(4) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 reads as under:

"Land" means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming."

6. In the present case, the disputed land is admittedly used for the petitioners for the purposes of agricultural as is evident from the statement on record that the petitioners are in occupation since 1380 Fasli. The U.P. Zamindari Abolition & Land Reforms Act itself provides procedure for eviction of unauthorized occupants under Section 122-B of the U.P. Zamindari Abolition & Land Reforms Act. The agricultural land is not covered under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, as is evident from the definition of U.P. Public premises (Eviction of Unauthorised Occupants) Act, 1972, which reads as under:-

"2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes,-

(i) the garden, grounds and out houses, if any, appertaining to such building or part of a building; and

(ii) Any fittings or fixtures affixed to or any furniture supplied with such building or art of a building for the more beneficial enjoyment thereof.

but does not include land which for the time bering is held by a tenure holder under any law relating to land tenures."

"2(e) 'Public premises' means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of:

(v) any company as defined in Section 3 of Companies Act, 1956 in which not less than fifty-one per cent of the paid up share capital is held by the State Government; or

(vi) any local authority; or

(vii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or

(viii) any society registered under the Societies Registration Act, 1860, the governing body whereof consists under the rules or regulation of the society,

wholly or public officer, or nominees of the State Government, or both;

and also includes,--

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds or land belonging to the State Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);

(ii) Any premises acquired under the land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of that Act providing for re-entry by the State Government in certain conditions."

7. Therefore, a conjoin reading of the definitions given under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 of the premises and public premises clearly exclude the application of the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act in case a tenure holder holdsthe land for the time being. In the present case, the evidence is on record that the petitioners were in possession on the disputed land from 1380 Fasli. Therefore, at the time when proceedings were initiated for eviction, the petitioners were a tenure holder for the time being.

8. Hence the proceedings could only be drawn under U.P. Zamindari Abolition & Land Reforms Act and could not have been drawn under the Uttar Padesh Public Premises (Eviction of Unauthorised Occupants) Act. Thus, the proceedings initiated under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, which gave rise to these writ petitions, were without jurisdiction."

19. As will appears from the aforesaid judgment as well as proviso to Section 2(b) that no proceedings can be initiated where the petitioner is a tenure-holder under the law relating to land tenure.

20. As will appear from the aforesaid facts that both the parties are claiming their title with regard to the land which was left over and was never mutated, therefore, the provisions under the Public Premises Act is not maintainable. However, liberty is given to the respondents to initiate the proceedings for the adjudication of the rights in the civil Court.

21. A writ of certiorari is issued quashing the orders dated 18.09.1995 and 29.01.1993 passed by the District Judge, Uttarkashi and Prescribed Authority, Bhatwari, Uttarkashi and the notice dated 08.07.1992 issued against the petitioner (Annexure No. 6 to the writ petition).

22. Writ petition is allowed. No order as to costs.

04.08.2006 (Rajesh Tandon, J.)
Rathour